IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.11.2007
CORAM:
THE HONOURABLE MR. JUSTICE S.MANIKUMAR
W.P.No.19323 of 2006
M.P.No.1 of 2006

Maria Joseph Roy ... Petitioner

Vs.

The Competent Authority,
Urband Land Ceiling and
Assistant Commissioner of
Urban Land Tax, T.Nagar ,
No.84, Arcot Road,
Kodambakkam, Chennai. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, forbearing the respondent from in any manner interfering with the right possession and enjoyment of the lands to an extent of 1480 Sq.Metre in T.S.Nos.45 and 46, Block 16, Kottur Village Mylapore Triplicane Taluk, Chennai District, in the light of the provisions as contained in Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 20 of 1999.

For Petitioner : Mr.V.Ramesh for Mr.B.Natarajan
For Respondent : Mr.P.Subramanian,
Government Advocate

O R D E R
Writ Petition is for a Mandamus, forbearing the respondents from in any manner interferring with the possession and enjoyment of the petitioner's land to an extent of 1480 Sq.Metre in T.S.Nos.45 and 46, Block 16, Kottur Village Mylapore Triplicane Taluk, Chennai District, in the light of the provisions contained in Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 20 of 1999.

2. The power agent of the petitioner has sworn an affidavit and filed this present Writ Petition. The case of the petitioner is that originally lands in question belonged to one Susai, S/o. J.Thamullusamy Pillai. The petitioner is the grand son of the elder brother of said Susai. The lands in question were settled in his favour by a registered Settlement deed dated 13.01.1972 and as Document No.53 of 1972. Since then, he was in possession and enjoyment of the property. In the year 1988, he obtained patta from the Tahsildar, Mylapore Taluk. Due to water scarcity, cultivation was stopped and after cessation of agricultural activity, the land was lying vacant. At that time, some persons approached him for lease of the said lands and he permitted them to put up superstructure with a specific understanding that they shall not put up any permanent structure and the rent was fixed at Rs.100/- per month. The petitioner has further submitted that he had plans to construct a hospital in the lands and due to insufficiency of funds, he could not do so and therefore, he allowed them to continue as tenants and even today, they are in possession. By collecting rents from them, the petitioner contended that he is in constructive possession of the land.

3. The petitioner has further submitted that just few days before filing of the Writ Petition, some officials from the respondents measured the extent of land and they also instructed the tenants to hand over the possession of the land to the Government. When the tenants reported the matter to him, he contacted his counsel and thereafter, made an enquiry and found that the lands were acquired by the respondent under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. It is the further case of the petitioner that neither the Tahsildar nor any other authority approached him or issued him any notice, directing him to surrender the possession and that there was no disturbance till filing of the Writ Petition. Referring to the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, No.20 of 99, published in Gazette on 16th June 1999, the petitioner has submitted that the acquisition of the land under 1978 Act cannot affect the rights of the petitioner to own or possess or enjoy the above said property, inasmuch as, the physical possession of the land is still with him. It is further submitted by the petitioner that he has not received any compensation so far and even if any compensation was paid, he is willing to return the same with interest.

4. The grounds raised in the Writ Petition are as follows:
i)As per Section 3 of the Repeal Act, 20 of 99, the land is deemed to have vested with the State Government under Sub-Section 3 of Section 11 of the Principal Act, but the possession has not been taken by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority, then, such land shall not be restored, unless the amount paid, if any, has been refunded to the State Government. Further, as per Section 4 of the Repeal Act, all the proceedings relating to any order made or purported to be made under the Principal Act, pending immediately before the commencement of the Repeal Act, before any Court, Tribunal or any other authority shall abate.
ii)As per the Repeal Act, the specific aspects as contained in the Saving Clause, Section 3 alone would continue to operate and the effect of the Repeal Act should be in consonance with the objects and the reasons given in the Repeal Act, which states that the Principal Act, 1978, did not bring the desired results and by repealing the same, it was expected by the Government that it would be a boost to the Housing Industry to provide employment to the poor. Therefore, when the land owner is in possession of the land, all proceedings except proceedings relating to Section 12, 13, 14, 15, 15(b) and 16 are deemed to be abated.
iii)As the petitioner is in possession of the lands on the date of the Repeal Act and since the subject lands were not taken over by the authority under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, the proceedings are said to be abated as per the decision of the Supreme Court reported in JT 2000 Supp. 1 SC 295, and followed by this Court in number of decisions.

5. The respondent in his counter affidavit, has submitted that the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, came into force in the Urban agglomeration with effect from 03.08.1967. The following check up lands were acquired under the provisions of the Act from the holdings of Maria Joseph Roy.
Block/Village
S.No.
Extent of excess vacant land acquired
Block 16 of Kottur Village
45/1
720 sq.mts.

46
760 Sq.mts

Total

1480 Sq.mts

6. The respondents further submitted that the excess vacant land vested with the Government with effect from 06.08.1980 as per Section 11(3) of the Act and possession of the land was handed over to the Tahsildar, Mylapore Taluk, on 27.07.1980. The said land was allotted to the Tamil Nadu Slum Clearance Board by G.O.Ms.No.1223, Revenue, dated 13.07.1983. The amount payable under Section 12(6) of the Act was ordered to be disbursed to the Urban Land Owner by the competent authority, Mylapore and the amount was kept in Revenue Deposit in the State Bank of India, on 12.09.1997, since the Urban Land Owner has not received the amount.

7. The respondent has further submitted that as the acquisition file was not available, counter affidavit has been filed on the basis of the file in R.Dis.No.4324/93, dated 19.09.1997, in which, action was taken to remit the amount payable under Section 12(6) to the Urban Land Owner. The personal inspection by the present competent authority revealed that there are several hut dwellers in the land in question and they are treated as encroachers of the land. The contention of the petitioner that they are tenants of the Urban Land Owners are denied. As stated supra, after the acquisition of the excess land of 1480 Sq.mts by the competent authority (Urban Land Unit, Mylapore), the land had been allotted to the Tamil Nadu Slum Clearance Board by G.O.Ms.No.1223, Revenue, dated 13.07.1983.

8. As per Section 3(1)(a) of the Repeal Act, 20 of 1999, the repeal of the Principal Act, shall not affect the vesting of any vacant land, under Section 11(3) possession of which has been taken over by the State Government and Section 3 of the Repeal Act, 20 of 1999 is not applicable to the case. It is further submitted that no proceedings were pending on the commencement of the Repeal Act, which came into effect from 16.06.1999, and Writ petition is purely an after thought and time barred. It is further submitted that the acquisition proceedings came to be closed in the year 1980, when the lands were taken over by the Government. Therefore, the file was closed and the issue of payment of amount payable under Section 12(6) of the Act commenced in a fresh file in R.Dis.No.4324/93, Dated 19.09.1997 and as per the entries in the disbursement file, it is found that the entire amount payable under Section 12(6) of the Act was paid to the Urban Land Owner. Though the lands are enjoyed by several hut dwellers, there is no proof that the petitioner is now in physical possession of the excess land as claimed by him. Under such circumstances, the respondents further submitted that since the lands were taken over as early as in the year 1980 and no proceedings were pending on the crucial date, viz., 16.06.1999, the contentions raised by the petitioner are untenable and therefore, the Writ Petition deserves to be dismissed.

9. Mr.V.Ramesh, learned counsel for the petitioner, contended that the lands in question belonged to one Susai and the petitioner, being a grand son to the elder brother of said Susai, got properties by way of registered settlement deed dated 13.01.1972 and since then, he is in absolute possession and enjoyment of the property. He further submitted that after obtaining patta from the Tahsildar, Mylapore, in the year 1988, he allowed some persons to occupy in the said lands with specific understanding that there shall not be any pucca building thereon and the petitioner is collecting monthly rents from them. As the repeal Act is a beneficial legislation for the benefit of the land owners, who are in possession of their land, any proceedings which were pending on the date of Repeal Act, i.e., on 16.06.1999, are said to be abated. He further submitted that as no notice under Section 11(5) of the Act was served on the petitioner to surrender possession and in the absence of any material to prove that the possession was taken over from the petitioner, it should be construed that the petitioner is in legal possession of the lands in question and therefore, the saving clause as provided under Section 3 of the repeal Act would come into operation and therefore, the respondents have no legal and statutory right to interfere with the petitioner's possession and enjoyment of the above said lands. In support of his contention, learned counsel for the petitioner

relied on the following decisions and orders passed by this Court.
1.Tamil Nadu Housing Board v. A.Viswam reported in AIR 1996 SC 3377
2.Rameshwar Saran v. State reported in 1988 All.L.J. 559
3.Vijay Foundation (P) Ltd., M/s. v. The Principal Commissioner and Commissioner of Land Reforms and 2 others reported in 2006 (4) LW 159,
4.W.P.No.17416 of 2004, dated 22.08.2006
5.W.P.No.19845 of 2006, dated 31.07.2006
6.W.P.No.6641 of 1997, dated 09.09.2004
7.W.P.No.29081 of 2003, dated 19.10.2006
8.W.P.Nos.33839 and 33911 of 2004, dated 25.09.2006

10. Relying on the decision in Tamil Nadu Housing Board v. A.Viswam reported in AIR 1996 SC 3377, learned counsel for the petitioner submitted that the mode of taking over possession by the Government should have been recorded in a memo, in the presence of witnesses and if the interest of the land owners are affected, there is no question of symbolic possession of the land. According to him, the vesting of land with the Government is not taking over of actual possession of the land and in the absence of any evidence to show that the possession was taken over by the Government as per the procedure contemplated under Section 11(5) or 11(6) of the Act, the only inference that can be drawn is that the petitioner is still in possession of the property.

11. Mr.P.Subramanian, learned Government Advocate, submitted that the excess lands were acquired by the Government from the petitioner and after taking over possession, the same were handed over to the Tahsildar, Mylapore, Triplicane Taluk on 27.09.1980. He further submitted that as the lands were allotted to the Tamil Nadu Slum Clearance Board by G.O.Ms.No.1223, Revenue, dated 13.07.1983 and the petitioner having received the compensation amount, cannot now claim that he is still in possession of the property. He further submitted that the hut dwellers in the lands were only encroachers and they are not permissive occupants of the petitioner. Referring to Section 11(3) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, as stood before the Repeal Act, 20 of 1999, learned counsel for the respondents submitted that the moment, the competent authority issues notice in the Tamil Nadu Government Gazette, declaring that the lands as excess, the same shall be deemed to have been acquired by the State Government, absolutely free from all encumbrances and as per Section 11(5) of the Act, the competent authority, may, by notice in writing, order any person, who may be in possession of it to surrender or deliver possession thereof to the State Government within 30 days from the date of service of notice. According to him, if possession is taken over by the Government, there is no need for the competent authority to resort to action under Section 11(6) of the Act, which contemplates that if any person refuses or fails to comply with the order, under Sub-Section 5 of the Act, the competent authority may take possession of the vacant land or cause it to be given to the State Government or to any person duly authorised by the State Government in this behalf and may for that purpose use such force as may be necessary. In the light of the language employed under Section 11(3) read with Section 11(6) of the Act, learned counsel for the respondent submitted that recourse to Section 11(6) of the Act is taken only if there is necessity arising out of refusal or failure to comply with the order under sub-Section (5) of the Act and not mandatory. He further submitted that since the possession was already taken over by the Government in the year 1980, the same cannot be questioned at this stage, after nearly 26 years and the Writ Petition has to be dismissed for unexplained delay and latches.

12. Heard Mr.V.Ramesh, learned counsel for the petitioner and Mr.P.Subramanian, learned Government Advocate for the respondents.

12. Before going into the merits of this case, let us deal with some of the decisions cited by the learned counsel for the petitioner.

13. In W.P.No.29081 of 2003, dated 19.10.2006, the petitioner therein has challenged the notice under Section 11 of the Tamil Nadu Urband Land (Ceiling and Regulation) Act, 1978, and sought a direction to treat the proceedings as abated under Section 4 of the repeal Act 20 of 1999. This Court on perusal of the records found that neither the petitioner therein nor his predecessors in title was served with any proper notice in terms of the Act and the Rules made thereunder. This Court disbelieved the mode of effecting service by affixtures on a stick said to have been planted in the land and in the absence of any notice by Registered post, the mode of service, as followed by the authorities, was held to be illegal. This Court further observed that there were no records to show that physical possession was taken over from the petitioner therein, who was the owner of the land, since 1986 and notice under Section 11(5) of the Act dated 13.11.1997, ought to have been served on him by the mode prescribed under the Act. This Court on perusal of the records, found that even after the purchase in the year 1986, the name of the predecessors-in-title was found in the revenue records and even in the final notice under Form 7, it was found that the address of the land owner was not known to the authorities.
14. In a decision in Vijay Foundation (P) Ltd., M/s. v. The Principal Commissioner and Commissioner of Land Reforms and 2 others reported in 2006 (4) LW 159, wherein, the Writ petition was filed challenging the proceedings dated 30.11.1998 under Section 11(5) of the Act, requiring the petitioner to surrender the possession of the land. In the above judgment, this Court on the basis of the pleadings and the materials on record, found that proceedings were initiated against a person, who was not the owner of the property and therefore, the mandatory provisions of Section 7 to 12 of the Act were violated. Since no notice was issued to a person, who was in actual possession, this Court held that the entire proceedings were vitiated. On facts, the above reported judgment is not applicable to the case on hand, as Section 11(5) of the Act contemplates that the State Government, by notice, in writing, order any person, who may be in possession of it to surrender or deliver possession there of to the State Government.
15. In W.P.No.17416 of 2004 dated 28.06.2006, to sustain possession, the Government relied on a letter written by a Tahsildar to another Tahsildar, stating that the land owners have already delivered possession, whereas, none of the land owners signed in that letter. In the absence of any signature in the interdepartmental correspondence, this Court came to the conclusion that the competent authority had not taken physical possession of the property.

16. In W.P.No.19845 of 2006 dated 31.07.2006, a learned Single Judge, on perusal of the materials found that the notice sent to a person, who was no longer interested in the property, pursuant to the sale effected by her. Since there were no materials on record to show that the possession was taken from subsequent owner of the property, the Court held that the entire proceedings were vitiated.

17. In W.P.No.6641 of 1997, dated 09.09.2004, a learned Single Judge of this Court, at Paragraph 8, held that,
"8. The declaration made under sub-section 3 of Section 11 would result in the vesting of the land in State Government and the deemed possession of it. Under Sub-section 5 of Section 11, after the vesting of the land in the State Government as provided under Sub-Section 3 takes place, the competent authority will have to issue a notice in writing to the person who is in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government within 30 days of the service of the notice. If any person refuses or fails to comply with an order made under the sub-Section (5), the competent authority may take possession of the vacant land or cause it to be given to the State Government or to any person duly authorised by the State Government in this behalf and may for that purpose use such force as may be necessary. Thus Section 11 of the Act provides the manner in which excess land available with the person should be notified, declared and physical possession taken from the concerned person."

18. In W.P.Nos.33839 and 33911 of 2004, dated 25.09.2006, the learned Single Judge found that

there was no contrary material to prove that the petitioner therein had parted with the rents and the respondents therein took possession of the land subsequent to the issuance of the notice under Section 11(5) of the Act and therefore, directed that the proceedings be treated as abated under Section 9(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999.
19. The main issue to be decided in this Writ Petition is whether the petitioner is still in possession of the property and whether any proceedings are still pending under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 to declare the same as abated by virtue of Section 4 of the Repeal Act, 20 of 1999.
20. Before going into the factual aspects of the case, it would be relevant to extract few provisions of the Old Act, viz., the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978.

21. As per Section 7 of the Act, 1978, persons holding lands in excess of the ceiling limit, as defined in Section 3(b) of the Act and file statement. On the basis of the statement filed as per Section 7 of the Act and after such enquiry, the competent authority, may deem it fit, prepare a draft statement as regards the vacant land held in excess of ceiling limit. Upon service of draft statement, the objections received are considered by the competent authority under Section 9(5) of the Act, by giving a reasonable opportunity and a final statement is prepared under Section 10 of the Act.

22. Section 11 provides procedure for acquisition of the vacant land in excess of ceiling limit. The said Section is extracted hereunder:
"11. Acquisition of vacant land in excess of ceiling limit:- (1) As soon as may be after the service of the final statement under Section 10 on the person concerned, the competent authority shall cause a notification given the particulars of the vacant land held by such person in excess of the ceiling limit and stating that:-
(i) such vacant land is to be acquired by the State Government; and
(ii) the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests of such land,
to be published for the information of the general public in the Tamil Nadu Government Gazette, and in such other manner as may be prescribed.
(2) After considering the claims of the persons interested in the vacant land, made to the competent authority in pursuance of the notification published under sub-section (1), the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.
(3) At any tune after the publication of the notification under sub-section (1) the competent authority may, by notification in the Tamil Nadu Government Gazette declare that the excess vacant land referred to in the notification published under sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.
(4) During the period commencing on the date of publication of the notification under sub-Section (1) and ending with the date specified in the declaration made under sub-section (3)-
(i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and
(ii) no person shall alter or cause to be altered the use of such excess vacant land.
(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice.
(6) If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the State Government or to any person duly authorised by the State Government in this behalf and may for that purpose use

such force as may necessary."

23. Section 12 of the Act provides for payment of amount for vacant land acquired and it reads as follows:

"(1) Where any vacant land is deemed to have been acquired by the State Government under sub-Section (3) of section 11, the State Government shall pay to the person or persons having any interest therein, -

(a) in a case where there is any income from such vacant land, an amount equal to ten times the net average annual income actually derived from such land during the period of five consecutive years immediately preceding the date of publication of the notification issued under sub-section (1) of Section 11:

Provided that where in respect of such vacant land the amount calculated under this clause is less than the amount calculated under clause (b) the person or persons having interest in the vacant land shall be paid the higher amount calculated under clause (b);

(b) in a case where no income is derived from such vacant land, an amount calculated at a rate-

(i) not exceeding fifty rupees per square metre in the case of vacant land situated in an urban agglomeration falling within the category I specified in Schedule I;

(ii) not exceeding twenty-five rupees per square metre in the case of vacant land situated in an urban agglomeration falling within category II specified in that Schedule; and

(iii) not exceeding fifteen rupees per square metre in the case of vacant land situated in an urban agglomeration falling within the category III specified in that Schedule.

(2) The net average annual income referred to in clause (a) of sub-section (1) shall be calculated in the manner and in accordance with the principles set out in Schedule II.

(3) For the purpose of clause (b) of sub-section (1), the State Government shall-

(a) divide, by notification in the Tamil Nadu Government Gazette, every urban agglomeration situated within the State into different zones, having regard to the location and the general use of the land situated in an urban agglomeration, the utility of the land in that urban agglomeration for the orderly urban development thereof and such other relevant factors as the circumstances of the case may require; and

(b) fix, subject to the maximum rates specified in that clause, the rate per square metre of vacant land in each zone, having regard to the availability of vacant land in the zone, the existing use of vacant land in the zone and such other relevant factors as the circumstances of the case may require.

(4) Different rates may be fixed under clause (b) of sub-section for vacant lands situated in different zones within each urban agglomeration.

(5) Notwithstanding anything contained in sub-section (1) where any vacant land which is deemed to have been acquired under sub-section (3) of section 11 is held by any person under a grant lease or other tenure from the Central Government or any State Government and-

(i) the terms of such grant, lease or other tenure do not provide for payment of any amount to such person on the termination of such grant, lease or other tenure and the resumption of such land by the Central Government or the State Government, as the case may be; or

(ii) the terms of such grant, lease or other tenure provide for payment of any amount to such person on such termination and resumption, then,-

(a) in a case falling under clause (1), no amount shall be payable in respect of such vacant land under sub-section (1) ; and

(b) in a case falling under clause (ii), the amount payable in respect of such vacant land shall be the amount payable to him under the terms of such grant, lease or other tenure on such termination and resumption or the amount payable to him under sub-section (1), whichever is less.

(6) The competent authority may, by order in writing, determine the amount to be paid in accordance with the provisions of this section as also the person, or, where there are several persons interested in the land, the persons to whom it shall be paid and in what proportion, if any.

(7) Before determining the amount to be paid, every person interested shall be given an opportunity to state his case as to the amount to be paid to him.
(8) The competent authority shall dispose of every case for determination of the amount to be paid as expeditiously as possible and in any case within such period as may be prescribed.
(9) Any claim or liability enforceable against any vacant land which is deemed to have been acquired under sub-section (3) of section 11 may be enforced only against the amount payable under this section in respect of such land and against any other property of the owner of such land."

24. In the affidavit filed in support of the petition, the petitioner has stated that he was not paid any compensation. Whereas, the records demonstrate that the petitioner has received the compensation in instalments. Concedingly, the petitioner has not preferred any appeal against the proceedings initiated for acquiring the excess vacant land. As stated supra, as per Section 12(6) to (8), the competent authority may, in order in writing, the determination the amount to be paid in accordance with the provisions of the section as also the person, or, where there are several persons interested in the land, the persons to whom it shall be paid and in what proportion, if any. Before determining the amount to be paid, every person interested shall be given an opportunity to state his case as to the amount to be paid to him. The competent authority shall dispose of every case for determination of the amount to be paid as expeditiously as possible and in any case within such period as may be prescribed.

25. Admittedly the petitioner has received a portion of the compensation determined by the department no materials have been placed before this Court to prove that the petitioner has objected to the determination of the quantum of compensation nor he had denied that the possession was taken by the competent authority before the receipt of compensation.

26. It is seen from the records that cheque No.496454, dated 01.10.1985 for Rs.2456.80 and Cheque No.559753, dated 28.01.1987 for Rs.2368/- was received by the petitioner as fifth and sixth installments without any protest. No where in the payment receipts, the petitioner has raised any objection as regards acquisition of the lands in dispute or determination of the compensation. Having received the compensation as a person interested in the year 1985 and thereafter, for the land which acquired under Section 11 of the Act, it is not open to him to contend, after 21 years that possession is still with him and therefore, the respondents should be restrained from interfering with the possession. Further, it is apparent that the petitioner has deliberately concealed the fact of receipt of compensation and he has not approached this Court with clean hands.

27. Section 12 of the Act would come into operation only when the land is deemed to have been acquired under Section 11(3) of the Act and the determination of payment of compensation under Section 12 of the Act, arises only after possession is taken over. Right to receive compensation arises only when possession is parted with the Government. Unless possession is taken over, the Government would not venture to disburse compensation to the person or persons having any interest in the property. When the petitioner has claimed that physical possession of the land is still retained by him and not disturbed since 1980, it is for him to prove with material documents and satisfy that he is entitled to claim the benefit under the saving clause in the Repeal Act. It is hard to believe that a person, who claims to own valuable property in the heart of the city will allow unknown persons to put up huts and occupy the lands since 1980. No revenue records have been produced before the Court to prove that he is in continuos possession of the property.

28. In Rameshwar Saran v. State of U.P. reported in 1988 ALL.L.J. 559, a Division Bench of the Allahabad considered a case under the Land Acquisition Act, where there wais no publication of the Notification under Section 4(1) of the Act and at Paragraph 22, held as follows:
"It is well settled that any legislation which has the effect of depriving a person of his land has to be

strictly interpreted. It is also well settled that there has to be strict compliance with the provisions of the Statute before a person can be deprived of his land. Although it is no longer a fundamental right, the very provision of Art.300-A of the Constitution makes it clear that a person cannot be deprived of his property except in accordance with law. That makes it obligatory on the part of the State or any acquiring body to strictly comply with the law of acquisition of property. The very basis of any acquisition proceedings under the Land Acquisition Act is the publication of notification under Section 4(1) of the Act. Prior to 24th Sept. 1984, the law required publication of the notification in the gazette and publishing of the substance of the notification in the locality and the date for the purpose of filing objections under S.5A was to be counted from the date of publication of the notification in the Gazette. After the amendment in 1984 of the State Government has to do the publication in one additional manner viz., publishing the notification in two newspapers having circulation in the locality and one in a regional language."

At Paragraph 25, the Division Bench held as follows:

"Where there was no publication of the notification in any newspaper nor the substance of the notification was published in the locality it could not be said that S.4(1) of the Act was complied with. Since the provisions of S.4(1) of the Act are mandatory, the publication of the notification under S.4(1) of the Act in the Gazette alone will not survive. As a consequence, the subsequent proceedings under S.6(1) or under S.17(4) or S.16 of the Act will also not survive. Further, the State Government published a notification under S.6(4) thereafter in the Gazette without publishing it in the newspapers and in the locality as required in law, the gazette notification under S.6(1) would also fall through. Hence, both the notifications would be liable to be quashed. In view of such defects in the acquisition proceedings the acquisition of land and taking possession of the land was not proper."

In the above reported judgment, the mandatory requirement of publication of the notification, meaning, adequate notice of acquiring the land was not made and in that context, the Court held that depriving a person of his property was not in accordance with law and possession taken by the Government was held to be not proper. In the case on hand, there is no dispute with regard to the declaration of excess land by the respondent and the issue urged before this Court that the petitioner is still in possession of the property. The records produced before this Court clearly demonstrate that after taking over possession of the lands, the petitioner has received compensation from the Department for the excess land acquired from him. Therefore, once the petitioner had accepted the vesting of land with the Government and received due compensation, he cannot revert back and plead that the possession is still with him and seek for declaration that the proceedings initiated under the Urban Land Ceiling Act as abated. Therefore, the above decision is not applicable to the facts of the case.

29. In Tamil Nadu Housing Board v. Viswam (dead) by Legal Representatives, reported in AIR 1996 SC 3380, the Apex Court considered a case where the original land owner sought for a perpetual injunction against the Housing Board. The suit was dismissed and on appeal, the appellate authority decreed the suit and the High Court confirmed the same. When the matter was taken on appeal to the Supreme Court, it was contended by the respondents therein that as three Courts had concurrently found that the respondents were in possession of the lands, the appellant had not proved that possession was taken over by the Land Acquisition Offier from them. Though the Supreme Court in Paragraph No.9 of the judgment held that one of the accepted modes of taking possession of the acquired land is recording of a memorandum of Panchanama by the Land Acquisition Officer in the presence of the witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the land, the Court accepted the contention of the appellant that when the claimant/owner had received the

compensation without (sic) protest, as a corollary, possession would be taken and thereafter the land stands vested under Section 16 of the Land Acquisition Act free from all encumbrances. At Paragraph No.10 of the judgment, the Supreme Court held that "it is seen that when the respondent is asserting his legal title to the acquired land, he should have necessarily impleaded the LAO as party. The Board having had possession from the LAO, cannot be expected to prove how the LAO had taken possession of the land. Therefore, applying the said principle to the case on hand, when the land owner had received the compensation, determined under Section of the Tamil Nadu Urban Land (Ceilng and Regulation) Act, 1978, the natural corollary would be that possession had been taken over by the respondent and there is no necessity to invoke Sections 11(5) or 11(6) of the Old Act and vesting of land is completed in all respects.

30. In none of the cases cited by the petitioner, the land owner was in receipt of compensation as determined under Section 12 of the Act, 1978. All the decisions relied on by the learned counsel for the petitioner relate to the notices issued to the erstwhile owners of the property and that there was some procedural irregularity in the notices issued under Section 11(5) of the Act to the person in possession as contemplated under the Act and therefore, the judgments are not applicable to the case on hand, where the petitioner by his conduct had accepted that vesting of land as per Section 11(3) of the Act is completed.

31. Disbursement file produced by the learned counsel for the respondent, also reflect the fact that the lands in Survey Nos.45 and 46 of Block No.16, Kottur Village, were inspected and T.R.Susai was also enquired and it is recorded as follows:

"The excess vacant land belonging to T.R.Susai in T.S.No.45 and 46, Bk.16 was already acquired and compensation is being paid in Office. This case may therefore be deleted from the file of 7(2) cases pending in Office."

32. Having received the compensation for the excess vacant land, apparently, after 21 years, the petitioner had chosen to execute a General Power of Attorney to one Mohammed Yasin, deponent in this Writ Petition and claimed that he is still in possession. As stated supra, in the absence of any material produced before this Court to show that the petitioner is in possession of the land, he is not entitled to invoke Section 3 of Repeal Act 20 of 1999.

33. In view of the above, I do not find that the petitioner has made out a case to invoke the provisions of the repeal Act. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

14.11.2007
skm
S. MANIKUMAR, J.

skm

To
The Competent Authority,
Urband Land Ceiling and
Assistant Commissioner of
Urban Land Tax, T.Nagar ,
No.84, Arcot Road,
Kodambakkam, Chennai.

14.11.2007